

REMARKS/ARGUMENTS

The Office Action mailed April 30, 2004, has been carefully considered. Reconsideration in view of the following remarks is respectfully requested.

Claims 11, 12, and 17 are currently pending. Claim 27 has been canceled, without prejudice or disclaimer of the subject matter contained therein.

Drawings

The drawings stand objected to under 37 CFR 1.83(a). The office action requests that “the embodiment wherein the flap has a ridge according to claim 27 must be shown or the features cancelled from the claim” This objection is respectfully traversed. Claim 27 has been cancelled without prejudice or disclaimer of the subject matter contained therein. Thus, it is respectfully requested that this objection be withdrawn.

Claim Rejection – 35 USC 112

Claim 27 stands rejected under 35 USC 112, first paragraph, as failing to allegedly comply with the written description requirement. This rejection is respectfully traversed. Claim 27 has been cancelled without prejudice or disclaimer of the subject matter contained therein. Thus, it is respectfully requested that this rejection be withdrawn.

Claim Rejection - 35 U.S.C. § 103

Claims 11, 12, 17 and 27 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Jones (U.S.P. 3,315,753) to Cragg et al. (Cragg '753) and Krol (USP 4,573,576). Claim 11 is an independent claim. This rejection is respectfully traversed.

The office action states:

“Jones does not disclose the cutting device mounted on a card that supports a medical device system for delivering a foam material. Cragg ‘753 teaches including a device 108 used for cutting foam material in a kit including a medical device system for delivering a foam material, which allows tools used together to be available in a convenient manner. Therefore, it would have been obvious to include the cutter of Jones with a kit including a medical device for delivering a foam material since it would allow tools used together to be conveniently available. Though Figure 1 of Cragg ‘753 appears to show a kit as being mounted on a card, there is no support for a card in the specification; however, Krol teaches mounting a kit on a card to provide easy access to tools within the kit.. Therefore, it would have been obvious that the kit of Jones in view of Cragg ‘753 be mounted on a card to provide easy access to the tools of the kit.”

According to M.P.E.P. §2136.02, “[f]or applications filed on or after November 29, 1999, if the applicant provides evidence that the application and prior art reference were ... subject to an obligation of assignment to the same person, ... any rejections under 35 U.S.C. 102(e)/103 based upon such a commonly owned reference should not be made or maintained.” See also, MPEP §706.02(II).

Claim 11 stands rejected under 35 U.S.C. 103(a) as being anticipated by Jones (U.S.P. 3,315,753) to Cragg et al. (Cragg ‘753). Cragg ‘753 and the present application, were, at the time the invention was made, owned by, or subject to an obligation of assignment to the same entity, Sub-Q, Inc. The assignment for ‘753 is located on Reel/Frame 010040/0084 and the assignment for the present invention may be found in Reel/Frame 012050/0132.

Furthermore, since Jones nor Krol does not disclose the cutting device mounted on a card that supports a medical device system for delivering a foam material as claimed in claim 11, it can not be said that the prior art references anticipate the present invention. Accordingly, it is respectfully requested that this rejection be withdrawn.

Request for Entry of Amendment

Entry of this Amendment will place the Application in better condition for allowance, or at the least, narrow any issues for an appeal. Accordingly, entry of this Amendment is appropriate and is respectfully requested.

Conclusion

It is believed that this Amendment places the above-identified patent application into condition for allowance. Early favorable consideration of this Amendment is earnestly solicited.

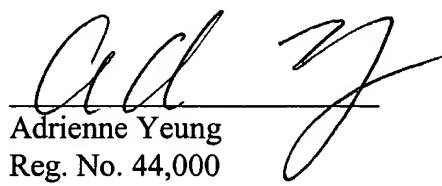
If, in the opinion of the Examiner, an interview would expedite the prosecution of this application, the Examiner is invited to call the undersigned attorney at the number indicated below.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Please charge any additional required fee or credit any overpayment not otherwise paid or credited to our deposit account.

Respectfully submitted,
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Dated: July 21, 2004



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